

corporations. From the European Convention's case law it is indeed clear that legal persons enjoy wide protection against the criminal justice system under the right to a fair trial.

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### **CONSIDERATION OF THE CASE UNDER THE PROCEDURE OF SUMMARY PROCEEDINGS IN THE CONTEXT OF ENSURING THE RIGHT OF A PERSON TO FAIR TRIAL**

The research is devoted to hearing of cases under the procedure of summary proceedings as one of the main procedural forms. It indicates justifiability of application and compliance of such a form with the requirements of Art. 6 of the European Convention on the right of a person to fair trial only subject to a number of requirements.

**Key words:** *summary proceedings, court hearing, right to a fair trial.*

In the wording of October 3, 2017, the Civil Procedural Code of Ukraine (hereinafter referred to as the CPC of Ukraine) introduced the possibility of hearing certain categories of cases (minor cases, cases arising from labor relations, cases of minor complexity and other cases in which priority is given to an expeditious judgment delivery) in the form of summary proceedings.

The list of cases in which hearing under rules of summary proceedings is impossible (cases arising out of family relations, except for disputes regarding recovering of alimony and division of property of spouses; relating to inheritance, relating to the privatization of the state housing facilities; the recognition assets' possession as unjustified and their reclamation; cases relating to the price of claim more than five hundred subsistence minimum amounts for able-bodied persons) has also been established.

The discussion on the expediency of simplifying litigation procedures continued for a long time: Recommendation № R (81) 7 of the Committee of

Ministers of the Council of Europe to member states on ways to facilitate access to system of justice dated May 14, 1981 referred to the need to develop measures in relation to uncontested or non-controversial particulars of a claim in order to obtain expedient delivery of decision, deprived of unnecessary formalities, without need to appear before court in person or excessive expenses [1]. Gradually, this thesis has been recreated and improved in the following advisory acts: Recommendation № R (84) 5 of the Committee of Ministers of the Council of Europe to member states on the principles of civil justice aimed at improving the functioning of justice dated 28 February, 1984 states that the court, at least in the first instance court, is to be given the authority to decide, depending on the nature of the case, and except for the cases where the specified is clearly stipulated by law, whether the proceeding is to be carried out in writing or orally, or in both of these ways [2].

Recommendation № R (95) 5 of the Committee of Ministers of the Council of Europe to member states on the introduction and improvement of the functioning of systems and procedures for appeals in civil and economic cases dated February 7, 1995 also indicates refusal of court hearings, holding of only one hearing or, depending on the circumstances, a preliminary hearing; the implementation of only oral proceeding or only writing proceeding as one of the means of expediting proceedings [3].

However, in the context of the transformation of national legal systems, taking into account the practice of the European Court of Human Rights, it became necessary to «update» ideas on due process of court hearing, which resulted in Opinion № 6 (2004) of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe as to fair trial within a reasonable time and role of judge in court proceedings, taking into account alternative means of resolving disputes dated November 24, 2004 [4].

Thus, in the recent case of «Mirovni Inštitut v. Slovenia» the European Court of Human Rights (hereinafter «the Court») found that there had been a violation of paragraph 1 of Article 6 of the Convention on the right to a fair trial [5]. This case concerned an administrative dispute between a research institute and the Ministry of Education, Science and Sport of Slovenia, which arose in connection with the improper conduct of the tender procedure. As the Court points out in its decision, the institute-applicant clearly requested to hold the hearings at which witnesses' statements as for the errors alleged by the claimant in the assessment of the programs submitted for consideration in the tender procedure could be considered. After the parties exchanged several written documents, the administrative court, without hearing, rejected the statement of claim, detailing in the decision all the extrajudicial proceedings in the ministry, described the materials of both parties, but the motivation of the decision was given by the national court on one page, mainly referring to the materials of the ministry, and, as for the claimant, the court merely did not agree with his position, and quoted the law. Subsequently, none of the evidence relied on by the institute-applicant in its appeal was mentioned in the court's reasoning.

Despite the fact that the possibility of hearing the case without a hearing was provided for by Slovenian national law, the applicant complained to the European Court of Human Rights about violation of paragraph 1 of Article 6 of the Convention in connection with the violation of the right to a fair trial due to the absence of an oral hearing in an administrative court and the absence of arguments in the decision of this court. With regard to this, the European Court of Human Rights noted that during the proceedings in the court of the first and only instance, the right to a «public hearing» within the meaning of paragraph 1 of Article 6, provides for the right to an «oral hearing» unless there are exceptional circumstances justifying the waiver of such a hearing, and in the event of the case hearing in several authorities, at least one authority is to provide the opportunity to hold such a hearing if there are no such exceptional circumstances. The exceptional nature of the circumstances which may justify the refusal of the oral hearing in the proceedings is limited to the nature of the issues dealt with by the competent national court: the European Court of Human Rights has agreed to exceptional circumstances in cases where the proceedings concerned solely legal or specific technical issues, noting that oral hearing may not be held, if, for example, certain facts are not disputed, and courts may deliver just and grounded decisions on the basis of written materials submitted by the parties.

Thus, despite the existence of a national legislation in the field of the possibility of a case consideration under the procedure of summary proceedings without summoning the parties, national courts should take into account that the refusal to hold an oral hearing may be justified only in certain cases:

- 1) if there is no dispute about the facts: in this event, cases may have a sign of indisputability, and therefore, in accordance with national legislation, may be considered in a writ or separate proceeding;

- 2) if a court may consider and resolve the case in just and reasonable manner on the basis of the relevant procedural documents of the parties and other written materials. In some cases, the European Court of Human Rights recognizes that a written procedure may be even more effective than oral hearing (for example, in matters relating to the calculation of tax payments and social benefits when the hearing of a case by court of first instance or an appeal / cassation review concern law matters, but not the facts). Since only in summary proceedings the right of the parties to provide oral explanations is implemented, as well as to involve witnesses in the case for the purpose of obtaining their testimony, the courts are to take into account that the restriction of the parties in this right may lead to a violation of the European Convention norms;

- 3) if the parties to the case agree with the tacit consent or, in the presence of respective petitions, the case hearing may be fully acceptable without a summons of the parties. At the same time, when at least one of the parties submits petition for an oral hearing, the court has either to exercise this right or to provide reasonable grounds for restricting a person in such a right. However, even the consent (or lack of objections against the summary proceedings) of a person for consideration without summoning of the parties

may not result in the violation of adversarial principle and procedural equality, in disproportional restriction of other procedural rights guaranteed both by national legislation and by the European Convention;

4) 4) in the hearing of the case, at least one authority is to entitle a person the right to an oral hearing, unless there are listed exceptional circumstances. Thus, if a person was refused an oral hearing, it is the court of appeal, which is to “correct: such a mistake, since according to Art. 367 of the Civil Procedure Code of Ukraine, the court of appellate instance is authorized to review the case, taking into account the evidence available in it and additional evidence, and verify the legality and validity of the decision of the court of first instance within the framework of the arguments and requirements of the appeal.

At the same time, when the court of first instance is the only court which decides on the fact, and the court of appellate instance has truncated powers and may review a decision only as for the issue of the application of law (incomplete appeal model), it is the court of first instance which is to exercise such a person's right;

5) since the absence of oral hearings affects not only the parties' ability to provide oral explanations, but also the opportunity for the public and the press to be present in the courtroom, holding a trial without summoning parties shall not be a barrier to maintaining trust in the court, because the public character of hearings protects the parties from the administration of justice secretly, without public scrutiny, and contributes to a fair trial.

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